



STEFAN I. MYCHAJLIW

ERIE COUNTY COMPTROLLER

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Contact – Office of Erie County Comptroller at Comptroller@Erie.gov, or 716.858.8400

INVESTIGATION: HEALTH COMMISSIONER MUST PAY BACK OVERTIME BILLED TO TAXPAYERS

Office of Erie County Comptroller issues report showing the \$336,148 in overtime and comp time paid to Dr. Gale Burstein was improper and against state law

(BUFFALO) – Erie County Comptroller Stefan I. Mychajliw Jr. released a report on overtime paid to Erie County Health Commissioner Gale Burstein, highlighting hundreds of thousands of dollars that were paid improperly under state law, and as such must be paid back. The Comptroller points to a provision under state law that as an appointed position, the law states the Erie County Health Commissioner is not eligible to be paid overtime. Dr. Burstein has been paid a combined total of \$336,148 in overtime and comp time for 2020 and 2021. Those overtime payments are in addition to her base salary of \$207,292 in 2020 and \$209,044 in 2021.

New York State Public Health Law section 351 allows counties to appoint a physician as a health commissioner, which Erie County did with Dr. Gale Burstein. That same law states that her compensation shall be “fixed” by the legislature. Because the legislature annually fixes the health commissioner’s salary at a set and specific rate of \$209,044 in 2021, for example, the law states she cannot then earn additional revenue overtime. Her overtime amounted to additional payments of \$176,819 in 2021.

The report points to a second reason why the Erie County Health Commissioner is not entitled to overtime. In Erie County, managerial confidential compensation matches the union negotiated CSEA contract, unless stated otherwise elsewhere. The CSEA contract specifically prohibits “employees who are required to have a medical degree” from receiving overtime.

“Commissioner Burstein has a medical degree and was appointed to that position. Since medical doctors are exempt from overtime, that means she does not qualify to receive it. The additional compensation is improper and illegal. Dr. Burstein needs to pay it back before the county is sued, costing taxpayers even more money on top of her exorbitant overtime,” said Comptroller Mychajliw.

This is another example of how the Erie County Health Commissioner has improperly received overtime to which she was not entitled throughout her tenure.

“It is unreasonable to suggest the Health Commissioner pay \$336,148 back all at once. The Department of Personnel should work out a reasonable repayment plan that would allow Dr. Burstein to pay back the illegal overtime payments over her remaining tenure as Commissioner. A repayment plan should be implemented quickly.”

“The law and contract are crystal clear: anyone with a medical degree is exempt from receiving overtime. This needs to be remedied quickly to avoid costly litigation. To protect taxpayers, the Personnel Office should establish a repayment plan immediately. The Erie County attorney is also conflicted on this issue, considering he is also a direct Poloncarz appointee that received COVID related overtime. Litigation could commence quickly if the Poloncarz Administration doesn’t take action,” concluded Comptroller Mychajliw.

Dr. Gale Burstein’s set salary is \$216,122 in 2022.

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